

Appl. No. 09/620,572
Amdt. dated Feb. 24, 2006
Reply to Office action of Aug. 24, 2005

REMARKS/ARGUMENTS

Claims 1-4, 9-12, 15-16, 18-28 and 30-42 are pending in the application. Claims 5-8, 13-14, 17 and 29 were previously cancelled without prejudice. This amendment is being filed with a request for a three month extension. A credit card authorization form is enclosed to pay for the fees. The examiner rejected claims 1-4, 9-12, 15-16, 18-28 and 30-42 in the Office Action mailed August 24, 2005 (hereinafter referred to as "Office Action"). In view of the following remarks and amendments, applicant respectfully request a timely Notice of Allowance be issued in this case.

Support for the amendments can be found throughout the application. Applicant respectfully submits that no new matter is added by the amendments.

Claim Rejections under 35 U.S.C. § 103(a)

The examiner rejected claims 1, 9, 11, 15, 30 and 34-37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,793,980 to Glaser in view of U.S. Patent No. 6,442,283 to Tewfik. The examiner also rejected claims 2-4, 10, 12, 28, 31-33 and 41 under 35 U.S.C. § 103(a) as being unpatentable over Glaser and Tewfik as applied to claims 1 and 3, and further in view of U.S. Patent No. 6,078,758 to Patton. In addition, the examiner rejected claim 16 under 35 U.S.C. § 103(a) as being unpatentable over Glaser and Tewfik as applied to claim 9, and further in view of U.S. Patent No. 6,338,044 to Cook. Moreover, the examiner rejected claims 18-19 and 25-27 under 35 U.S.C. § 103(a) as being unpatentable over Glaser in view of U.S. Patent No. 6,052,470 to Mouri. The examiner also rejected claims 20-24 under 35 U.S.C. § 103(a) as being unpatentable over Glaser and Mouri as applied to claim 18 and in further view of Tewfik. In addition, the examiner rejected claims 38-39 and 42 under 35 U.S.C. § 103(a) as being unpatentable over Glaser and Tewfik as applied to claim 1, and further in view of Gabriel Bouvigne's MP3 Glossary. Finally, the examiner rejected claim 40 under 35 U.S.C. § 103(a) as being unpatentable over Glaser, Tewfik and Patton as applied to claim 1, and further in view of Cook.

In order to establish a prima facie case of obviousness, three criteria must be met: (1) there must be some suggestion or motivation in the prior art to modify the reference or to combine reference teachings as proposed, (2) there must be a reasonable expectation of success, and (3) the prior art or combined references must teach or suggest all the claim limitations. MPEP § 2143; *In re Vacek*, 947 F.2d 488 (Fed. Cir. 1991). "The prior art must suggest the desirability of the claimed invention." MPEP § 2143.01. **Both the invention and the prior art references must be considered as a whole.** MPEP § 2141.02. Applicant respectfully submits that claims 1-4, 9-12, 15-16, 18-28 and 30-42 are not obvious over the cited art and are, therefore, allowable under 35 U.S.C. § 103(a) for the reasons stated below.

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There is no suggestion or motivation to modify or combine the references

As shown in Figure 9 and throughout U.S. Patent No. 5,793,980 to Glaser (e.g., Abstract; col. 1, lines 54-57; col. 2, lines 55-59), Glaser provides a real-time, audio-on-demand system suitable for use within a conventional personal computer. For the most part, Glaser describes a compression/decompression and buffering technique to transfer blocks of data from a server to a personal computer for real-time playback. Glaser requires an uncompressed data rate of at least 22 kilobytes per second to transmit a high quality audio signal in real time (col. 2, lines 8-13). Glaser uses a compression/decompression and buffering technique that allows the data rate for the compressed data to be as low as 1 kilobyte per second (col. 2, lines 22-24).

As shown in Figure 3 and throughout U.S. Patent No. 6,442,283 to Tewfik (e.g., col. 11, lines 1-5), Tewfik provides a watermarking process that modulates embedded data 302 (watermark) with the carrier signal 304. This process requires a slow data rate of 252 bits per second, which does not account for any reduction in bit rate required for error correction or synchronization (col. 11, lines 5-11). Moreover, Tewfik requires multiple error correcting steps 306, 310 and 312 to correct for channel distortions created by the watermarking process (col. 11, lines 12-67).

Applicant respectfully submits that there is no suggestion or motivation to take the 252 bit per second watermarking process of Tewfik and incorporate it into Glaser's 22 kilobyte per second real-time player. Moreover, the Tewfik process causes distortion that has to be corrected, which slows the data rate even more. As a result, at the time the invention was made, no person of ordinary skill in the art would combine the watermarking process of Tewfik with the real-time audio system of Glaser. As a result, Tewfik does not cure the deficiencies of Glaser.

As shown in Figures 1-3 and throughout U.S. Patent No. 6,078,758 to Patton (e.g., col. 4, line 40-col. 5, line 3), Patton discloses a process to encode audio onto a negative film strip or photographic paper using a digitized bit map. Applicant respectfully submits that there is no suggestion or motivation to take a process to encode audio onto a negative film strip or photographic paper using a digitized bit map and incorporate it into either Glaser or Tewfik. As a result, Patton does not cure the deficiencies of Glaser or Tewfik.

As shown in Figures 18 and 19, Mouri discloses two separate and distinct processes: recording to a disc (Figure 18); and playback from a disc (Figure 19). Applicant respectfully submits that there is no suggestion or motivation to insert a disc recording process immediately followed by a disc playback process within the audio control center 120 of Glaser. As a result, Mouri does not cure the deficiencies of Glaser or Tewfik.

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Accordingly, applicant respectfully submits that claims 1-4, 9-12, 15-16, 18-28 and 30-42 are not obvious over the cited art and are, therefore, allowable under 35 U.S.C. § 103(a). Accordingly, applicant respectfully requests that the rejection of claims 1-4, 9-12, 15-16, 18-28 and 30-42 be withdrawn.

There is no reasonable expectation of success

For the reasons stated above, applicant respectfully submits that there is no reasonable expectation of success to modify Glaser using the teachings of Tewfik or Patton or Mouri. As a result, applicant respectfully submits that claims 1-4, 9-12, 15-16, 18-28 and 30-42 are not obvious over the cited art and are, therefore, allowable under 35 U.S.C. § 103(a). Accordingly, applicant respectfully requests that the rejection of claims 1-4, 9-12, 15-16, 18-28 and 30-42 be withdrawn

The cited references do not teach or suggest all the claim limitations

Unless the reference(s) teach or suggest all the claim limitations, obviousness cannot be found. MPEP § 2143.03. Further, once an independent claim is found to be non-obvious under 35 U.S.C. § 103, then any claim which depends from that independent claim is also non-obvious. MPEP § 2143.03; *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). For the reasons stated below, applicant respectfully submits that the cited references do not disclose, teach or suggest all the claim elements of claims 1-4, 9-12, 15-16, 18-28 and 30-42, as amended.

Claim 1

With respect to claim 1, applicant respectfully submits that Glaser and the other cited references do not disclose, suggest or teach, either alone or in combination, a method that:

converts said signals to a digital format using a sampling rate and a resolution sufficient to insert a first digital watermark into each sample without degrading said sample; or
inserts the first digital watermark into each sample.

First, as recognized by the examiner, Glaser does not disclose, suggest or teach converting said signals to a digital format using a sampling rate and a resolution sufficient to insert a first digital watermark into each sample without degrading said sample. Tewfik does not cure the deficiencies of Glaser because the 252 bit per second watermarking process of Tewfik will not work in Glaser's 22 kilobyte per second real-time player. Moreover, the Tewfik process causes distortion that has to be corrected, which slows the data rate even more. As a result, Glaser does not use a sampling rate and resolution sufficient to insert a first digital watermark into each sample using the process of Tewfik. Furthermore, Tewfik does not insert a digital watermark without degrading the samples.

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Second, as recognized by the examiner, Glaser does not insert a first digital watermark into each sample. As previously stated, Tewfik does not cure this deficiency.

As a result, applicant respectfully submits that claim 1 is not obvious over the cited references and is, therefore, allowable under 35 U.S.C. § 103.

Claims 2-4, 25-28, 30-32 and 38-41

With respect to claims 2-4, 25-28, 30-32 and 38-41, applicant respectfully submits that claims 2-4, 25-28, 30-32 and 38-41 depend from claim 1, which is allowable for the reasons stated above, and further distinguish over the cited references. Moreover, claims 25-26 are allowable for the reasons stated below in reference to claims 9 and 18. Accordingly, applicant respectfully submits that claims 2-4, 25-28, 30-32 and 38-41 are not obvious over the cited references and are, therefore, allowable under 35 U.S.C. § 103.

Claim 3

With respect to claim 3, applicant respectfully submits that Glaser and the other cited references do not disclose, suggest or teach, either alone or in combination, inserting a second digital watermark into said converted file prior to transporting said file to said end user. As a result, applicant respectfully submits that claim 3 is not obvious over the cited references and is, therefore, allowable under 35 U.S.C. § 103.

Claim 9

With respect to claim 9, applicant respectfully submits that Glaser and the other cited references do not disclose, suggest or teach, either alone or in combination, a system that:

converts said plurality of digital signals into a combined signal, transports said combined signal to a processing and storage system via a single connector, stores said combined signal, converts said combined signal back to said plurality of digital signals, converts said plurality of digital signals into a portable file, and closes said portable file each time a song or act is completed.

As shown in Figure 2A and described in columns 5-6, Glaser takes the inputs and converts them to a digital signal that is compressed and then stored in the digital library for future access. Glaser does not convert the combined signal back to a plurality of digital signals and then convert the digital signals into a portable file that is closed each time a song or act is completed. Tewfik does not cure the deficiencies of Glaser. Accordingly, applicant respectfully submits that claim 9 is not obvious over the cited references and is, therefore, allowable under 35 U.S.C. § 103.

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Claims 10-12, 15-16 and 33-37

With respect to claims 10-12, 15-16 and 33-37, applicant respectfully submits that claims 10-12, 15-16 and 33-37 depend from claim 9, which is allowable for the reasons stated above, and further distinguishes over the cited references. Moreover, claims 11 and 34-37 are allowable for the reasons stated above in reference to claim 1. Accordingly, applicant respectfully submits that claims 10-12, 15-16 and 33-37 are not obvious over the cited references and are, therefore, allowable under 35 U.S.C. § 103.

Claim 18

With respect to claim 18, as amended, applicant respectfully submits that Glaser and the other cited references do not disclose, suggest or teach, either alone or in combination, a system that:

a multiplexor connected to the capture device for converting said plurality of digital signals into a combined signal;

a processing unit connected to the multiplexor via a single connector for converting said combined signals to a plurality of time-synchronized and locked digital signals; and

a plurality of digital signal processors connected to the processing unit for each of said plurality of time-synchronized and locked digital signals for directing said signals, wherein at least one of said signals from said plurality of digital signal processors is converted into a portable file

As recognized by the examiner, Glaser fails to disclose, suggest or teach these elements. Mouri, however, discloses two separate processes (Figure 18 - recording a disc; Figure 19 - playing a disc) that are performed at different times and typically using different equipment at different locations. It would be unnecessary, pointless and a waste of processing power/resources to combine the digital signals into a combined signal and then convert the combined signal back to separate digital signals within the audio center 120 of Glaser. As a result, Mouri does not cure the deficiencies of Glaser. Accordingly, applicant respectfully submits that claim 18 is not obvious over the cited references and is, therefore, allowable under 35 U.S.C. § 103.

Claims 19-24

With respect to claims 19-24, applicant respectfully submits that claims 19-24 depend from claim 18, which is allowable for the reasons stated above, and further distinguish over the cited references. Moreover, claims 19-24 are allowable for the reasons stated above in reference to claim 1. Accordingly, applicant respectfully submits that claims 19-24 are not anticipated by the cited references and are, therefore, allowable under 35 U.S.C. § 103.

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Claim 42

With respect to claim 42, applicant respectfully submits that the cited references do not disclose, teach or suggest all the elements recited in claim 42 for the reasons stated above with respect to claim 1. More specifically, the cited references do not disclose, teach or suggest:

inserting the first digital watermark that identifies said live performance into each sample; or
inserting a second digital watermark that identifies the end user into said converted file.


Accordingly, applicant respectfully submits that claim 42 is not obvious over the cited references, and is, therefore, allowable under 35 U.S.C. § 103.

Conclusion

For the reasons set forth above, applicant respectfully requests reconsideration by the examiner and withdrawal of the rejections. Applicant submits that claims 1-4, 9-12, 15-16, 18-28 and 30-42 are fully patentable. Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If the examiner has any questions or comments, or if further clarification is required, it is requested that the examiner contact the undersigned at the telephone number listed below.

Respectfully submitted,

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